



Nevada State Board of Medical Examiners

* * * MINUTES * * *

OPEN SESSION TELEPHONE CONFERENCE BOARD MEETING

Held in the Conference Room at the Offices of the
Nevada State Board of Medical Examiners
1105 Terminal Way, Suite 301, Reno, NV 89502

and teleconferenced to:

the Conference Room at the Offices of the
Nevada State Board of Dental Examiners
6010 S. Rainbow Boulevard, Building A, Suite I, Las Vegas, Nevada 89118

THURSDAY, APRIL 1, 2010 – 4:00 P.M.

Board Members Present at Board Office

None

Board Members Present by Telephone

Benjamin J. Rodriguez, M.D., Vice President
Javaid Anwar, M.D.
Van V. Heffner
Michael J. Fischer, M.D.
Valerie J. Clark, BSN, RHU, LUTCF

Board Members Absent/Not Participating

Charles N. Held, M.D., President
Renee West, Secretary-Treasurer
Beverly A. Neyland, M.D.
Theodore B. Berndt, M.D.

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Staff Present at Board Office

Douglas C. Cooper, CMBI, Executive Director
Edward O. Cousineau, J.D., Deputy Executive Director
Lyn E. Beggs, J.D., General Counsel
Bradley O. Van Ry, J.D., Deputy General Counsel
Laurie L. Munson, Chief of Administration and Information Systems
Pamela J. Castagnola, CMBI, Interim Chief of Investigations
Heather L. Higgins, CMBI, Deputy Chief of Investigations
Lynnette L. Daniels, Chief of Licensing
Jerry C. Calvanese, M.D., Medical Reviewer

Also Present by Telephone

Keith D. Marcher, J.D., Senior Deputy Attorney General
Navneet Sharda, M.D.
Jacob L. Hafter, Esq.

Agenda Item 1

CALL TO ORDER AND ANNOUNCEMENTS

- Roll Call/Quorum
- Benjamin J. Rodriguez, M.D., Vice President

The meeting was called to order by Vice President Benjamin J. Rodriguez, M.D., at 4:00 p.m.

Ms. Beggs took roll call of the Board Members present via telephone and announced there was a quorum.

Agenda Item 2

CONSIDERATION OF REQUEST FOR RECONSIDERATION OF BOARD'S DECISION IN THE MATTER OF *THE NEVADA STATE BOARD OF MEDICAL EXAMINERS VS. NAVNEET SHARDA, M.D.*, BME CASE NO. 08-11856-1

- Jacob L. Hafter, Esq.

Dr. Rodriguez asked the Board Members whether they had received and reviewed the materials related to the matter, and all indicated they had. Dr. Rodriguez then stated that the matter before the Board was a request for reconsideration of the Board's decision in the case of *the Nevada State Board of Medical Examiners vs. Navneet Sharda, M.D.*, Case No. 08-11856-1. He explained that Board could either grant or deny the request for reconsideration. If granted, the matter will again go before the Board for decision at the next Board meeting; if denied, the original decision will stand.

Mr. Hafter stated that pursuant to NRS 233B.130(4), a petition for reconsideration is permitted under the Nevada Administrative Procedures Act. Although Dr. Sharda's petition was filed on March 8, technically a petition must be filed within 15 days after service of the final decision of the Board, and the findings of fact were filed on March 23, so his understanding was that the petition was deemed filed immediately thereafter. NRS 233B.130 also states that an order granting or denying the petition for reconsideration must be served on all parties at least

5 days prior to the expiration of the time allowed for filing a petition for judicial review. In this case, that is impossible at this point because it is already close to 30 days from the date the decision was made. Therefore, they have already filed a petition for judicial review. If the motion for reconsideration is granted and a decision is favorable, they will move to dismiss the judicial review at that time. Otherwise, the petition for judicial review will go forward.

Mr. Hafter presented Dr. Sharda's case as to the Board should grant the petition for reconsideration. He stated there were two findings of guilt, one with respect to count IV and the other with respect to Count IX. The Board, in its deliberations, had been engaging in open and free discussion related to the record until it got to Count IV, when that discussion stopped. Dr. Held opened his comments regarding that count by suggesting there was no harm done to the patient and there was an obvious discrepancy by the experts, but then put that aside and began talking about his own view as a pulmonologist as to what the standard of care would be for obtaining a biopsy in the case. He then stated what Dr. Sharda had done in the case was improper and that Dr. Sharda should be found guilty. They believe those remarks constituted testimony by Dr. Held as to what the standard of care should have been. Additionally, the synopsis of the record does not support the finding made on Count IV and there was not a preponderance of the evidence that Dr. Sharda was guilty. Without any discussion, the Board found Dr. Sharda guilty of Count IV.

Additionally, there was not a preponderance of the evidence that Dr. Sharda was guilty of Count IX. Dr. Sharda provided medical records that addressed the issues that were of concern to the Board and the evidence suggested his medical records were adequate. Yet, somehow, based on the opinion of a semi-retired community physician in Reno, the Board made a finding of guilt for inappropriate medical record keeping. Of greater concern was the adjudication process surrounding Count IX. Dr. Rodriguez opened the discussion by saying, "this is why we're here, this is what we're here to do, discipline Dr. Sharda for this issue, he's guilty, let's vote," and the Board voted and found him guilty without any further discussion. They believe such a finding is arbitrary and capricious. For those reasons, they are requesting the Board reconsider and reverse its decision on these two counts.

Ms. Beggs stated she was not going to object to the request for reconsideration, as it is within the purview of the adjudicating body to reconsider its decision. If the Board were to grant Dr. Sharda's request, the effect would be that the matter will be stayed and everything will basically be in a hiatus state until the June meeting, when the Board will reconsider those counts on which they previously found Dr. Sharda had violated the Medical Practice Act. At this point in time, she did not think it was appropriate for her to argue the merits of the case and would state on the record that she was not offering an objection should the Board wish to grant the request for reconsideration.

Dr. Rodriguez moved that the Board grant the Request for Reconsideration. Dr. Anwar seconded the motion, and it passed unanimously, with all adjudicating Board members voting in favor of the motion.

Discussion ensued regarding the issuance of an order staying the Board's decision, removal of the findings of fact from the website and staying the court hearing regarding Dr. Sharda's motion for a temporary restraining order.

Agenda Item 3
PUBLIC COMMENT

Dr. Rodriguez asked whether there were any members of the public present who would like to make a public comment, and there were none.

ADJOURNMENT

Mr. Heffner moved to adjourn the meeting. Dr. Fischer seconded the motion, and it passed. Dr. Rodríguez adjourned the meeting at 4:25 p.m.

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